

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

DePuy Mitek, Inc. )  
a Massachusetts Corporation )  
Plaintiff. )  
v. ) Civil No. 04-12457 PBS  
Arthrex, Inc. )  
a Delaware Corporation )  
Defendant. )

**Plaintiff DePuy Mitek's Motion To Strike  
Hearsay Exhibit And All Citation And Commentary Thereto**

Plaintiff DePuy Mitek moves to strike Exhibit 3 to Defendants Arthrex, Inc.'s And Pearsall's Ltd.'s Motion For Summary Judgment -- a brochure entitled "Spectra Extended Chain Polyethylene Fibers" -- as well as any citation to, or other use of, that brochure. In particular, the citations to, and discussion of, the brochure should be stricken from each of the following pleadings: (a) that Motion For Summary Judgment; (b) Defendants Arthrex, Inc.'s And Pearsall's Ltd.'s Concise Statement Of Material Facts In Support Of Their Motion For Summary Judgment; and (c) Defendants Arthrex, Inc.'s And Pearsall's Ltd.'s Opening Brief On Claim Construction (which also includes the brochure as Exhibit 3).

Pursuant to FED. R. EVID. 802, the brochure is inadmissible hearsay. Its use in any manner is legally improper and should be precluded. A (Proposed) Order to that effect, specifically addressing various specific improper uses of the hearsay evidence, accompanies this motion.

Dated: September 1, 2006

DEPUY MITEK, INC.,  
By its attorneys,

/s/ Erich M.Falke \_\_\_\_\_

Dianne B. Elderkin  
Lynn A. Malinoski  
Michael J. Bonella  
Erich M. Falke  
WOODCOCK WASHBURN LLP  
One Liberty Place - 46th Floor  
17th and Market Streets  
Philadelphia, PA 19103  
(215) 568-3100

Daniel J. Gleason (BBO #194900)  
Michelle Chassereau Jackson (BBO #654825)  
Nutter McClellan & Fish LLP  
World Trade Center West  
155 Seaport Boulevard  
Boston, MA. 02210-2604  
617-439-2000

**CERTIFICATE OF SERVICE**

I certify that I am counsel for DePuy Mitek, Inc. and that a true and correct copy of:

**Plaintiff DePuy Mitek's Motion To Strike Hearsay Exhibit And All Citation And Commentary Thereto**

was served on counsel for Defendants Arthrex, Inc. and Pearsalls Ltd. on this date via the Court's e-mail notification with the following recipients being listed as filing users for Defendants:

Charles W. Saber  
Dickstein Shapiro  
1825 Eye Street, NW  
Washington, DC 2006  
saberc@dicksteinshapiro.com

Raymond P. Ausrotas  
Todd & Weld LLP  
28 State Street, 31<sup>st</sup> Floor  
Boston, MA 02109  
rausrotas@toddweld.com

Dated: September 1, 2006

/s/ Erich M. Falke

Erich M. Falke

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**[Proposed] Order Granting Plaintiff DePuy Mitek's**

**Motion To Strike Hearsay Exhibit And All Citation And Commentary Thereto**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2006, upon consideration of the  
DePuy Mitek's Motion To Strike Hearsay Exhibit And All Citation And Commentary Thereto, as  
well as the pleadings and arguments submitted thereon,

It is hereby ORDERED that the Motion is GRANTED.

All use of the brochure attached as Exhibit 3 to Defendants Arthrex, Inc.'s And Pearsall's  
Ltd.'s Motion For Summary Judgment is stricken. In particular, each of the following is stricken:

1. Exhibit 3 to Defendants Arthrex, Inc.'s And Pearsall's Ltd.'s Motion For  
Summary Judgment;
2. Exhibit 3 to Defendants Arthrex, Inc.'s And Pearsall's Ltd.'s Opening Brief On  
Claim Construction;

3. Statements Of Fact Nos. 9, 48-49, and 51-53 contained in Defendants Arthrex, Inc.'s And Pearsall's Ltd.'s Concise Statement Of Material Facts In Support Of Their Motion For Summary Judgment;

4. The material for which the brochure is cited as support on page 1 of Defendants Arthrex, Inc.'s And Pearsall's Ltd.'s Motion For Summary Judgment; and

5. The material for which the brochure is cited as support on pages 1 and 14 of Defendants Arthrex, Inc.'s And Pearsall's Ltd.'s Opening Brief On Claim Construction.

Date: \_\_\_\_\_

\_\_\_\_\_  
United States District Judge Saris